



**Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Labrador Airways Limited

**File:** B-241608

**Date:** February 13, 1991

Raymond P. Whalen, Esq., White, Ottenheimer & Green, for the protester.

Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency improperly relaxed requirement regarding provision of commercial flight services is denied where there is no showing that the protester was prejudiced by the agency's actions.

### DECISION

Labrador Airways Limited protests the award of a contract to the Canadian Commercial Corporation (CCC) on behalf of Bradley Air Services under request for proposals (RFP) No. F11626-90-R-0019, issued by the Department of the Air Force for air charter services in Canada to support the Northern Warning System Operation and Maintenance Contract.

We deny the protest.

The RFP contained four line items, with line items 1, 2 and 3 containing subline items. Line items 1 and 2 each required offerors to bid a per mile cost to provide air transportation services between certain points. This protest involves line item 0001AB, which concerns transportation services from Goose Bay, Newfoundland to Cartwright, Newfoundland. Following this line item the solicitation provides:

"NOTE: The U.S. Government shall receive twelve passenger seats per month (maximum of three seats or 600 pounds, or any combination thereof) per flight on contractor's commercial flights between Goose Bay, NFLD and Cartwright, NFLD. In exchange, the U.S. Government shall allow the contractor twelve passenger seats per month (maximum of three seats or 600 pounds, or any combination thereof) per flight

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on U.S. controlled contract flights between Goose Bay, NFLD and Cartwright NFLD (Route 10)."

According to the Air Force, the intent of the note is that if the government has passengers or cargo that require transportation on a day when there is no military flight scheduled under the contract, it would be permitted to use the contractor's flight at no cost, if there was one available. In exchange, if the contractor needed airlift services on the days of a scheduled military flight, the government would allow it to use space on that flight.

Labrador and Bradley responded to the solicitation and after being determined the low responsible offeror, Bradley was awarded the contract.

Labrador argues that the award to Bradley is improper because Bradley cannot comply with the note to line item 0001AB since it does not have commercial flights between Goose Bay and Cartwright or the licenses to provide commercial flights between these points. In the alternative, Labrador asserts that after the contract was awarded to Bradley it learned that the provisions of the note will not be enforced. Labrador states that as the incumbent contractor during the preceding year it carried 109 passengers on 71 scheduled flights pursuant to the clause. Labrador argues that since it believed that the contractor would be required to comply with the note and provide services between Goose Bay and Cartwright, its tender price was based on providing this service. Labrador also asserts that based on the service it provided under the prior contract, the additional cost to the government of these services without invoking the note will be \$142,000.<sup>1/</sup>

In response, the Air Force agrees that Bradley does not have commercial passenger service from Goose Bay to Cartwright. The Air Force explains that in the past the protester was the only bidder and the note was included in the solicitation as a convenience to the government and the protester. The Air Force argues, however, that the solicitation does not require contractors to have commercial service between Goose Bay and

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<sup>1/</sup> In its initial protest Labrador also argued that Bradley was informed of the contract award before the formal award was made, and that Bradley had been informed of Labrador's quotation and was told to ignore the note. In its agency report, the Air Force denied those allegations. Since Labrador did not respond to the agency's denial in its comments on the report, we consider these issues abandoned. See Engineered Air Sys., Inc., 69 Comp. Gen. 172 (1990), 90-1 CPD ¶ 75.

Cartwright and the note was only meant to apply if the successful contractor did have such service. The Air Force also argues that since the note called for an exchange of services between the government and the contractor, the possibility of providing these services should not have required Labrador to include any costs in its bid.

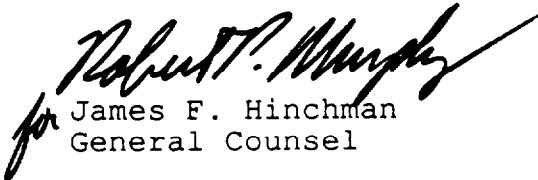
We do not agree with the Air Force that the solicitation did not require the contractor to provide commercial transportation services between Goose Bay and Cartwright as specified in the note. While the RFP did not specifically state in affirmative language that the contractor must have commercial service between Goose Bay and Cartwright, the note does state, "[t]he U.S. Government shall receive twelve passenger seats per month . . . per flight on contractor's commercial flights . . . ." Thus, the provision was framed in mandatory language and expressed the agency's requirement for commercial service between the two points. See Development Assoc., Inc., B-233221, Feb. 10, 1989, 89-1 CPD ¶ 140.

Even given that the government relaxed its requirements by selecting an offeror that could not provide the service, however, our Office will not sustain a protest that a procuring agency relaxed specifications for one offeror absent evidence that the protester was prejudiced. Merrick Eng'g, Inc., B-238706.3, Aug. 16, 1990, 90-2 CPD ¶ 130. In such a case, we will resolve any doubt concerning the prejudicial effect of the agency's action in favor of the protester. Logitek, Inc., B-238773.2; B-238773.3, Nov. 19, 1990, 90-2 CPD ¶ 401. Here, since Labrador failed to provide us information in its possession that would establish whether it was prejudiced, we conclude that the agency's improper action did not affect the protester's competitive position in the challenged procurement.

Labrador alleges in general terms that in the past the exchange of services for transportation from Goose Bay to Cartwright has resulted in a net cost to Labrador, and that this fact was considered in determining its offer. As discussed above, Labrador asserts that the additional cost to the government of the services without invoking the note is \$142,000. The protester did not, however, suggest or provide any information showing how it calculated that figure, how much of the total cost was recouped in the past through exchanges, or how much of this cost it included in its offer. The record establishes the difference between the two offers for item 0001AB, and Labrador alone has evidence of how much lower its offer would have been had the note regarding exchanges been deleted from the solicitation. Where prejudice can be relatively easily established by the protester and it fails to do so, we will not assume the existence of prejudice based on conclusory statements alone.

Finally, Labrador's argument that it will cost the government more if the services are not provided pursuant to the note does not provide a basis to sustain the protest. The argument is speculative at best, and, in any event, the issue is what effect the agency's decision to relax the requirement had on Labrador's bid, not the effect it had on the government's cost. In this regard, we note that, again, Labrador has not taken into consideration the offset the government will receive by not having to provide similar services in exchange for the services it receives.

The protest is denied.

  
for James F. Hinchman  
General Counsel